

is to be taken. The officer must be authorized to take testimony under 35 U.S.C. 23.

(2) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer, or by some other disinterested person in the presence of the officer, unless the presence of the officer is waived on the record by agreement of all parties.

(3) Any exhibits relied upon must be numbered according to the numbering scheme assigned for the contested case and must, if not previously served, be served at the deposition.

(4) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, and any other objection to the proceeding shall be noted on the record by the officer. Evidence objected to shall be taken subject to a ruling on the objection.

(5) When the testimony has been transcribed, the witness shall read and sign (in the form of an affidavit) a transcript of the deposition unless:

(i) The parties otherwise agree in writing, (ii) The parties waive reading and signature by the witness on the record at the deposition, or

(iii) The witness refuses to read or sign the transcript of the deposition.

(6) The officer shall prepare a certified transcript by attaching to the transcript of the deposition a certificate in the form of an affidavit signed and sealed by the officer. Unless the parties waive any of the following requirements, in which case the certificate shall so state, the certificate must state:

(i) The witness was duly sworn by the officer before commencement of testimony by the witness;

(ii) The transcript is a true record of the testimony given by the witness;

(iii) The name of the person who recorded the testimony and, if the officer did not record it, whether the testimony was recorded in the presence of the officer;

(iv) The presence or absence of any opponent;

(v) The place where the deposition was taken and the day and hour when the deposition began and ended;

(vi) The officer has no disqualifying interest, personal or financial, in a party; and

(vii) If a witness refuses to read or sign the transcript, the circumstances under which the witness refused.

(7) The officer must promptly provide a copy of the transcript to all parties. The proponent of the testimony must file the original as an exhibit.

(8) Any objection to the content, form, or manner of taking the deposition, including the qualifications of the officer, is waived unless made on the record during the deposition and preserved in a timely filed miscellaneous motion to exclude.

(f) *Costs.* Except as the Board may order or the parties may agree in writing, the proponent of the testimony shall bear all costs associated with the testimony, including the reasonable costs associated with making the witness available for the cross-examination.

§ 41.158 Expert testimony; tests and data.

(a) Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight. Testimony on United States patent law will not be admitted.

(b) If a party relies on a technical test or data from such a test, the party must provide an affidavit explaining:

(1) Why the test or data is being used,

(2) How the test was performed and the data was generated,

(3) How the data is used to determine a value,

(4) How the test is regarded in the relevant art, and

(5) Any other information necessary for the Board to evaluate the test and data.

Subpart E—Patent Interferences

§ 41.200 Procedure; pendency.

(a) A patent interference is a contested case subject to the procedures set forth in subpart D of this part.

(b) A claim shall be given its broadest reasonable construction in light of